

Introduced by Senator Poochigian

February 9, 2005

An act to amend Section 3701.5 of, and to add Article 2.3 (commencing with Section 3737) to Chapter 4 of Part 1 of Division 4 of, and to add Sections 3741.1 and 3748 to, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 178, as introduced, Poochigian. Workers compensation: private self-insurance groups.

Existing law authorizes an employer to secure the payment of workers' compensation by securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer or as one employer in a group of employers upon proof satisfactory to the director of the ability to self-insure and to pay any compensation that may become due to employees.

Existing law establishes the Self-Insurers' Security Account for purposes related to the payment of the workers' compensation obligations of self-insurers.

This bill would impose various requirements on private self-insured groups, including requirements with respect to the net worth of the members of these groups, the reporting of financial and other information, security deposits, insurance, membership, and administration. The bill would create the Self-Insured Groups' Security Fund for specified purposes related to the payment of the workers' compensation obligations of private self-insured groups. The bill would require that the assets in this fund be maintained separately from those in the Self-Insurers' Security Fund, and that assessments be levied on private self-insured groups for placement in this fund.

The bill would require the Director of Industrial Relations to adopt reasonable rules and regulations as necessary to effectuate the provisions regulating private self-insured groups.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3701.5 of the Labor Code is amended to
2 read:

3 3701.5. (a) If the director determines that a private
4 self-insured employer, *or a private group of self-insured*
5 *employers*, has failed to pay workers' compensation as required
6 by this division, the security deposit shall be utilized to
7 administer and pay the employer's *or group's* compensation
8 obligations.

9 (b) If the director determines the security deposit has not been
10 immediately made available for the payment of compensation,
11 the director shall determine the method of payment and claims
12 administration as appropriate, which may include, but is not
13 limited to, payment by a surety that issued the bond, or payment
14 by an issuer of an irrevocable letter of credit, and administration
15 by a surety or by an adjusting agency, or through the
16 Self-Insurers' Security Fund *or the Self-Insured Groups' Security*
17 *Fund*, or any combination thereof.

18 (c) If the director determines the payment of benefits and
19 claims administration shall be made through the Self-Insurers'
20 Security Fund *or the Self-Insured Groups' Security Fund*, the
21 fund shall commence payment of the private self-insured
22 employer's obligations for which it is liable under Section 3743
23 *or 3748* within 30 days of notification. Payments shall be made
24 to claimants whose entitlement to benefits can be ascertained by
25 the fund, with or without proceedings before the appeals board.
26 Upon the assumption of obligations by the fund pursuant to the
27 director's determination, the fund shall have a right to immediate
28 possession of any posted security and the custodian, surety, or
29 issuer of any irrevocable letter of credit shall turn over the
30 security to the fund together with the interest that has accrued
31 since the date of the self-insured employer's default or
32 insolvency.

(d) The director shall promptly audit an employer *or group* upon making a determination under subdivision (a) or (b). The employer, any excess insurer *or reinsurer*, and any adjusting agency shall provide any relevant information in their possession. If the audit results in a preliminary estimate that liabilities exceed the amount of the security deposit, the director shall direct the custodian of the security deposit to liquidate it and provide all proceeds to the Self-Insurers' Security Fund *or to the Self-Insured Groups' Security Fund*. If the preliminary estimate is that liabilities are less than the security deposit, the director shall ensure the administration and payment of compensation pursuant to subdivision (b).

(e) The payment of benefits by the Self-Insurers' Security Fund *or the Self-Insured Groups' Security Fund* from security deposit proceeds shall release and discharge any custodian of the security deposit, surety, any issuer of a letter of credit, and the self-insured employer, from liability to fulfill obligations to provide those same benefits as compensation, but does not release any person from any liability to the fund for full reimbursement. Payment by a surety constitutes a full release of the surety's liability under the bond to the extent of that payment, and entitles the surety to full reimbursement by the principal or his or her estate. Full reimbursement includes necessary attorney fees and other costs and expenses, without prior claim or proceedings on the part of the injured employee or other beneficiaries. Any decision or determination made, or any settlement approved, by the director or by the appeals board under subdivision (g) shall conclusively be presumed valid and binding as to any and all known claims arising out of the underlying dispute, unless an appeal is made within the time limit specified in Section 5950.

(f) The director shall advise the Self-Insurers' Security Fund *or the Self-Insured Groups' Security Fund* promptly after receipt of information indicating that a private self-insured employer *or group* may be unable to meet its compensation obligations. The director shall also advise the Self-Insurers' Security Fund *or the Self-Insured Groups' Security Fund* of all determinations and directives made or issued pursuant to this section.

(g) Disputes concerning the posting, renewal, termination, exoneration, or return of all or any portion of the security deposit,

1 or any liability arising out of the posting or failure to post
2 security, or adequacy of the security or reasonableness of
3 administrative costs, including legal fees, and arising between or
4 among a surety, the issuer of an agreement of assumption and
5 guarantee of workers' compensation liabilities, the issuer of a
6 letter of credit, any custodian of the security deposit, a
7 self-insured employer *or group*, or the Self-Insurers' Security
8 Fund *or the Self-Insured Groups' Security Fund* shall be resolved
9 by the director. An appeal from the director's decision or
10 determination may be taken to the appropriate superior court by
11 petition for writ of mandate. Payment of claims from the security
12 deposit or by the Self-Insurers' Security Fund *or the Self-Insured*
13 *Groups' Security Fund* shall not be stayed pending the resolution
14 of the disputes unless and until the superior court issues a
15 determination staying a payment of claims decision or
16 determination of the director.

17 SEC. 2. Article 2.3 (commencing with Section 3737) is added
18 to Chapter 4 of Part 1 of Division 4 of the Labor Code, to read:

19
20 Article 2.3. Private Self-Insurance Group Security Act
21

22 3737. This article shall govern the establishment and
23 regulation of any group of private employers formed for the
24 purpose of self-insuring the obligation and liability of members
25 to pay compensation as required under this division.

26 3737.1. (a) Any employers seeking or possessing authority to
27 operate as a private self-insured group shall apply for a certificate
28 of consent to self-insure from the director.

29 (b) Any employers seeking a certificate of consent to
30 self-insure as a private self-insured group shall be required to
31 provide and maintain certified independently audited financials
32 for as many of its founding members as is necessary to evidence
33 a minimum consolidated net worth of five million dollars
34 (\$5,000,000) and a minimum consolidated net income of the
35 group members of five hundred thousand dollars (\$500,000).
36 After the self-insured group reaches and maintains these levels,
37 any additional new members shall not be required to provide
38 these financials. Instead, the administrators of the group shall
39 evaluate the finances of the potential new members by reviewing
40 their financial statements, tax returns, credit reports, or other

appropriate documentation as specified in the bylaws of the self-insured group.

(c) Any employers seeking a certificate of consent to self-insure as a private self-insured group shall be required to demonstrate to the satisfaction of the department that they meet the criteria of Section 3737.2.

(d) Any employers seeking a certificate of consent to self-insure as a private self-insured group shall be required to post and maintain the security deposit in a form acceptable to the director and in an amount described in Section 3737.3.

(e) Any employers seeking a certificate of consent to self-insure as a private self-insured group shall each agree to assume and discharge, jointly and severally, any compensation liability under this division and under Section 15479 of Title 8 of the California Code of Regulations of any and all other employers that are members of the self-insured group.

(f) Any employers seeking a certificate of consent to self-insure as a private self-insured group shall be required to provide one of the following:

(1) An independent evaluation of the applicant group's injury and illness prevention program as set forth in Sections 6314.5 and 6401.7, and Section 3203 of Title 8 of the California Code of Regulations, prepared by an independent, licensed, California professional engineer, certified safety professional, or certified industrial hygienist. The evaluation preparer shall disclose to the director if any of the following is true:

(A) The preparer or the preparer's firm has had business dealings with group member employers or their owners during the prior two years.

(B) The preparer is or has been employed by the present or prior insurance carrier or insurance broker for any member of the self-insured group during the past five years.

(C) The preparer or preparer's firm has been employed by a member employer or its parent in a safety and health or accident prevention capacity during the past five years.

(2) A written report or citation of a Division of Occupational Safety and Health inspection of the applicant employer's injury and illness prevention program pursuant to Sections 6314.5 and 6401.7, and Section 3203 of Title 8 of the California Code of Regulations. The Division of Occupational Safety and Health

1 inspection shall have been conducted within 120 days of the date
2 of application to become self-insured.

3 (g) The business relationships disclosed pursuant to paragraph
4 (1) of subdivision (f) may be considered by the director but shall
5 not alone constitute conflicts of interest, nor shall they disqualify
6 an individual from being an independent professional as required
7 by that paragraph.

8 (h) Every group shall maintain an effective injury prevention
9 program. An evaluation report pursuant to subdivision (f) that
10 shows the applicant for a certificate of consent to self-insure to
11 be without an effective injury prevention program shall be good
12 cause for denial of the application for self-insurance by the
13 director without prejudice to reapply at a later date.

14 (i) An employer applicant to a private self-insured group must
15 abate all serious violations found in the safety and health
16 evaluation report. Written verification of abatement must be sent
17 from the evaluation preparer to the department.

18 (j) An employer applicant to a self-insured group that is
19 already established shall comply with the self-insured group's
20 injury and illness prevention program.

21 3737.2. A private self-insured group may self-insure two or
22 more employers that meet any of the following criteria:

23 (a) Are engaged in a common trade or business within the
24 meaning of subdivision (b) of Section 11656.6 of the Insurance
25 Code. Such a private self-insured group shall file with the
26 department a statement that complies with the conditions set
27 forth in paragraph (3) of subdivision (a) of Section 11656.6 of
28 the Insurance Code.

29 (b) Are engaged in related activities in a given industry. Such
30 a private self-insured group shall demonstrate the related nature
31 of the member employers' business activities, to the satisfaction
32 of the department, by filing with the department documentation
33 establishing that:

34 (1) All member employers are classified within the same or a
35 related Standard Industrial Classification Code Division
36 Structure as published in the United States Department of
37 Commerce's Standard Industrial Classification Code Manual or
38 the equivalent North American Industry Classification System
39 grouping, or share a predominant payroll classification.

1 (2) All member employers are members in good standing in an
2 industry-specific trade association, which shall not have been
3 established for the primary purpose of securing a certificate of
4 consent to self-insure from the department, and which shall have
5 been in existence for at least five years prior to the application
6 for consent to self-insure.

7 (c) Have furnished other information, as required by the
8 director, demonstrating the employer members' common trade or
9 business or related activities in a given industry.

10 3737.3. (a) New private self-insured groups shall post and
11 maintain with the director a security deposit in a form acceptable
12 to the director and in an amount equal to the combined prior
13 three years of incurred losses of the founding members of the
14 group, subject to the statutory minimum established in
15 subdivision (b) of Section 3701.

16 (b) During the annual reporting process of the private
17 self-insured group, the director shall evaluate the funding status
18 and security of the group. If the director determines that the
19 security deposit is no longer proportional to the potential
20 exposure of the group as a result of an increase in membership or
21 loss experience, or as a result of a failure of the group to maintain
22 total assets in excess of its total liabilities, including the
23 actuarially estimated ultimate future claims liabilities, the
24 director shall immediately adjust the security deposit in the
25 amount of the deficiency. Should the director determine that the
26 security deposit is proportional to the size and loss experience of
27 the group, and that the group is adequately funded, no adjustment
28 to the security deposit shall occur.

29 3737.5. (a) A private self-insured group shall annually
30 demonstrate to the director that the group has a positive net worth
31 (assets of the self-insured group exceed the liabilities of the
32 self-insured group) based upon the group's audited financial
33 statements prepared by an independent, licensed certified public
34 accountant in accordance with generally accepted accounting
35 principles. The estimated ultimate future claims liabilities shall
36 be projected by an actuary who is a Fellow of the Casualty
37 Actuarial Society.

38 (b) A private self-insured group shall establish rates based
39 upon projected claims and claim expenses as set forth by the
40 director in regulations.

1 (c) In the event that any private self-insured group fails to, at
2 all times, maintain assets in excess of its liabilities, the director
3 shall require the self-insured group to take reasonable and
4 necessary remedial action as the director may determine,
5 including, but not limited to:

6 (1) The submission, by the self-insured group, of a plan, with
7 a form and content acceptable to the director, for prompt
8 correction of the deficiency.

9 (2) A reevaluation of past member employer contribution rates
10 and a projected plan for future contribution rates for any period
11 of time that the department may require.

12 (3) The suspension of any additional new members into the
13 self-insured group, the suspension of any distribution of
14 dividends or earnings on deposits or investments, or the
15 collection of all assessments or any portion thereof until the
16 self-insured group is deemed by the director to be capitalized in
17 accordance with this provision.

18 (4) The reallocation of surplus self-insured group funds
19 collected in other calendar years, but that are unnecessary for the
20 payment of claims or expenses for the calendar year collected.

21 (5) The reallocation of investment earnings associated with
22 other calendar years, but not necessary for the payment of claims
23 or expenses in the calendar year in which the earnings are
24 associated.

25 (6) An immediate assessment upon the members of the
26 self-insured group.

27 (7) The required posting of additional security.

28 (8) An examination of the self-insured group's operations and
29 finances by an outside qualified professional such as an attorney,
30 actuary, certified public accountant, or other person or
31 organization.

32 (9) Any other action that the director may find appropriate in
33 order to promptly correct the deficiency.

34 (d) In the event that the director determines that the financial
35 stability of the self-insured group cannot be restored in a timely
36 and appropriate manner, after notice and opportunity for a
37 hearing, the director may appoint a conservator or liquidator to
38 manage the group. Appointment of a conservator or liquidator by
39 the director shall also be good cause to revoke the self-insured's
40 group's certificate of consent to self-insure.

(e) In the event that the annual financial and actuarial reports described in Section 3737.9 evidence a surplus of group moneys in excess of the amount necessary to fund all obligations for a given fund year, the group's board of trustees may declare excess contributions, which may be refunded to the group's members in an amount not to exceed 50 percent of the surplus and no earlier than 36 months after the date the declaration of the board of trustees is provided in writing to the director. An additional 25 percent of the surplus for that fund year may be refunded to the group members 48 months after the date the declaration of the board of trustees is provided in writing to the director, and the remaining 25 percent of the surplus may be refunded to the group members 60 months after the date the declaration of the board of trustees is provided in writing to the director.

(f) The director shall adopt rules prescribing standards for the investment of group funds.

3737.7. Every private self-insured group shall have and maintain in full force a specific excess workers' compensation insurance policy or reinsurance contract issued by an admitted casualty insurance carrier or reinsurer authorized to transact that business in the state by the Department of Insurance. The specific excess policy or reinsurance contract shall not have a minimum retention level above one million dollars (\$1,000,000) per occurrence and the policy or contract may not be cancelled or renewed without prior written notice to the director and the self-insured group at least 30 days prior to the date of cancellation or nonrenewal by the carrier.

3737.9. (a) Private self-insured groups shall annually file with the director the following reports, on or before July 1 of each year:

(1) The group self-insurers' annual report as prescribed by the director.

(2) Current financial statements for the group as a whole, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, for the preceding fiscal year.

(3) An actuarial report, certified by an independent qualified actuary who is a member of the Casualty Actuarial Society. The actuarial report shall include a projection of the self-insured group's estimated ultimate future claims liabilities.

(4) A payroll report, filed by classification codes of the Workers' Compensation Insurance Rating Bureau for each member of the self-insured group and in aggregate, for the preceding 12-month period and including the current total number of employers participating in the group as well as the current total number of employees for each employer. The payroll report shall be accompanied by the final payroll audit of the group, as submitted to the group's excess insurance carrier.

(b) Every three years, on or before July 1, each private self-insured group shall file an audit of the outstanding claims and reserves performed by a qualified independent claims auditor.

(c) As necessary, the director may conduct a special audit to evaluate a private self-insured group's financial health. In circumstances where the director does not have the staff expertise or other necessary resources to conduct this special audit, the director may engage the services of a legal, financial, or other qualified person or organization to conduct or assist in the audit. In the event that outside professional services are utilized, any costs incurred shall be borne and paid by the private self-insured group under examination.

(d) The group administrator of a private self-insured group shall immediately report to the director, in writing, any information that materially alters any of the facts presented to the director in the reports required by this section, that materially alters the actuarial confidence of the group, or that indicates that the self-insured group is no longer in compliance with the statutory and regulatory requirements of the self-insurance program.

(e) The group administrator of any private self-insured group shall provide to the director a copy of any amendment or update to the self-insured group's bylaws or underwriting guidelines that pertains to the operations of the self-insured group.

(f) Private self-insured groups shall also be required to file any additional reports that may be deemed necessary by the director.

3737.11. All admittances of new member employers to private self-insured groups shall be in accordance with the following provisions:

(a) A private self-insured group may admit a new member employer upon the submission to the department of a completed

1 application, as prescribed by the director, for an interim
2 certificate of consent to self-insure at least 10 business days prior
3 to the effective date of coverage. The employer applicant to the
4 private self-insured group shall be deemed self-insured and
5 approved by the director on the effective date of coverage
6 requested under the interim certificate of consent to self-insure
7 unless the application is denied in writing by the director within
8 10 business days of receipt of the application. The member shall
9 be self-insured from the effective date of coverage requested
10 through the date of denial by the director. Coverage under the
11 self-insured group shall continue as set forth in subdivision (b).

12 (b) The department shall review and act upon an application
13 for a certificate of consent to self-insure from a new member to a
14 private self-insured group within 179 days from the effective date
15 of coverage and shall, within that period, issue a written approval
16 or denial of the new member's application. If the department
17 denies the new member's application for a certificate of consent
18 to self-insure, that employer shall leave the group and provide
19 proof of alternate coverage to the director and to the group no
20 later than 60 days after receiving notice of denial of the
21 application. Until the effective date of the alternate coverage, the
22 self-insured group shall remain liable for all compensation
23 liabilities of the employer. In no event shall the private
24 self-insured group be responsible for the employer's
25 compensation liabilities for injuries that occur more than 60 days
26 after the employer received notice of the denial of the application
27 for a certificate of consent to self-insure. The employer shall
28 remain liable for the payment of contributions and assessments
29 into the private self-insured group for the employer's period of
30 coverage as a member of the group.

31 (c) The director shall notify the Labor Commissioner of any
32 employer that was granted membership in a private self-insured
33 group, was subsequently denied a certificate of consent to
34 self-insure by the director, and, after 45 days from the denial, has
35 yet to provide to the director proof of coverage for workers'
36 compensation liabilities in the form of a binder, certificate of
37 insurance, or policy to the director.

38 (d) At the discretion of the director, the department may
39 request the financial statements of any employer applicant to a
40 self-insured group if that employer's contributions to the group

1 during the first year of membership would comprise 25 percent
2 or more of the group's total contributions for that same year.

3 (e) Any employer that joins a private self-insured group shall
4 maintain its membership in the group for a minimum of one year
5 unless its membership is terminated under the provisions of
6 Section 3737.11 or 3737.12.

7 3737.12. (a) (1) No member of a private, self-insured group
8 may be involuntarily canceled or terminated from membership in
9 a group self-insurer unless at least 15 calendar days' advance
10 written notice has been provided to the group member and to the
11 director. The notice of involuntary cancellation or termination
12 from the self-insured group shall take effect 30 calendar days
13 after the date of the written notice to the director and the
14 employer, unless a later date is contained in the notice from the
15 self-insured group.

16 (2) In the case of involuntary cancellation or termination of
17 membership of a member, the self-insured group shall remain
18 liable for all compensation liabilities of the group member
19 resulting from any claim with a date of injury during the period
20 of membership in the group self-insurer, up to the effective date
21 of the involuntary termination or cancellation. The group
22 member shall remain liable for the payment of any contributions
23 or assessments to the self-insured group relating to the period of
24 the employer's membership.

25 (3) Notwithstanding paragraph (2), the following provisions
26 apply in the case of the involuntary cancellation or termination of
27 membership of a member of a self-insured group:

28 (A) The self-insured group's liability for a member's claims
29 shall stop on the date of the member's coverage under a standard
30 workers' compensation policy issued by an admitted carrier.

31 (B) A current or former group member's claims may be
32 transferred to a carrier as set forth in subdivision (c) of Section
33 3702.8 under a special excess workers' compensation policy.

34 (C) A current or former group member's claims may be
35 transferred to another private self-insured group if the bylaws of
36 the two groups permit the transfer and the transfer is approved by
37 the director.

38 (D) A current or former group member's claims may be
39 transferred to the member if the bylaws of the group self-insurer
40 permit the transfer, the member has possession of an individual

1 certificate of consent to self-insure issued by the director and the
2 transfer has been approved by the director.

3 (4) Notice to the director of cancellation or termination of a
4 group member from a private self-insured group as set forth in
5 paragraph (1) shall be good cause for summary revocation of the
6 affiliate certificate issued to the group member on the applicable
7 date under paragraph (3) or the cancellation or termination date
8 under paragraph (1).

9 (5) Any group member leaving a self-insured group shall
10 provide proof of workers' compensation coverage to the director
11 and to the self-insured group within 45 days after the notice of
12 cancellation or termination, whether the notice is from the
13 self-insured group or the group member. The director shall notify
14 the Labor Commissioner of any employer that voluntarily or
15 involuntarily leaves a private self-insured group and that has
16 failed to provide proof of coverage for workers' compensation
17 liabilities in the form of a binder, certificate of insurance, or
18 policy to the director within 45 days after the notice of
19 cancellation or termination.

20 (b) (1) Any member of a self-insured group may withdraw
21 from the group and obtain alternate coverage after providing at
22 least 30 days' advance written notice of its intent to voluntarily
23 withdraw its participation in the group to the self-insured group's
24 administrator and the director.

25 (2) The self-insured group shall remain liable for all
26 compensation liabilities of any group member resulting from any
27 claim with a date of injury during the period of membership in
28 the group self-insurer, including the 30-day notice period
29 required for voluntary withdrawal of membership. The group
30 member shall remain liable for the payment of any contributions
31 and assessments to the self-insured group for the period of the
32 employer's membership in the group self-insurer.

33 3737.14. (a) Each self-insured group's application for a
34 certificate of consent to self-insure from the director shall be
35 accompanied by a filing on the part of the group administrator
36 setting forth all of the following information:

37 (1) The names and addresses of each of the officers, directors,
38 and general managers of the group administrator.

39 (2) Evidence of experience in the administration of group
40 insurance or self-insured groups.

1 (3) Two professional references associated with recent group
2 administration experience or other relevant experience.

3 (4) If incorporated in California, a certificate of incorporation,
4 or, if not incorporated, or incorporated in a state other than
5 California, proof of an actual place of business where contact
6 may be made and legal service, if necessary, may be
7 accomplished.

8 (5) Evidence of a fidelity bond and a professional liability
9 insurance policy in amounts and forms approved by the director.

10 (b) The director shall have the authority to undertake
11 reasonable and necessary action to ensure that the group
12 administrator's credentials and operations are within acceptable
13 industry standards.

14 3737.15. (a) No claims administrator of a private group
15 self-insurer, or employee, officer, or director of such a claims
16 administrator, shall be an employee, officer or director of, or
17 have either a direct or indirect management or financial interest
18 in, the group administrator of the same private group self-insurer.

19 (b) No group administrator of a private self-insured group, or
20 employee, officer, or director of the group administrator, shall be
21 an employee, officer, or director of, or have either a direct or
22 indirect management or financial interest in, the claims
23 administrator serving that private self-insured group.

24 (c) No group administrator or claims administrator of a private
25 self-insured group shall also serve as the independent certified
26 public accountant for the same private self-insured group.

27 (d) No member, employee, officer, or director of the board of
28 trustees of a private self-insured group shall be an employee,
29 officer, or director of, or have a direct or indirect management or
30 financial interest in, the group's claims administrator, group
31 administrator, or independent certified public accountant.

32 3737.16. The director shall adopt reasonable rules and
33 regulations as necessary to effectuate the provisions of this
34 article. The regulations shall include, but not be limited to, the
35 establishment of appropriate application fees and administrative
36 assessments to fund the oversight of the group self-insurance
37 program.

38 SEC. 3. Section 3741.1 is added to the Labor Code, to read:

39 3741.1. As used in this article, "Self-Insurers' Security Fund"
40 includes both the Self-Insurers' Security Fund for private

1 self-insured employers and the Self-Insured Groups' Security
2 Fund for groups of private self-insured employers.

3 SEC. 4. Section 3748 is added to the Labor Code, to read:

4 3748. (a) For the exclusive purpose of ensuring the full
5 payment of private self-insured group members' obligations
6 under this division, there shall be established, in like manner as
7 the Self-Insurers' Security Fund established pursuant to Section
8 3742, a Self-Insured Groups' Security Fund. The Self-Insurers'
9 Security Fund and the Self-Insured Groups' Security Fund shall
10 at all times be maintained as two distinct funds, and the moneys
11 and other assets in each shall not be commingled or used to pay
12 claims from the other.

13 Any risk that transfers from the Self-Insurers' Security Fund to
14 the Self-Insured Groups' Security Fund shall become the
15 exclusive obligation of the Self-Insured Groups' Security Fund,
16 and the Self-Insurers' Security Fund shall retain no liability for
17 that risk. The Self-Insured Groups' Security Fund shall begin
18 providing coverage to its members on or before July 1, 2007,
19 upon approval from the director of one of the following:

20 (1) A financial plan prepared by an independent actuary who
21 is a member of the Casualty Actuarial Society that demonstrates
22 an assessment base sufficiently large to insure the payment of
23 benefits to employees of a defaulting group.

24 (2) An alternative security plan whereby all eligible private
25 group self-insureds shall collectively secure the aggregate
26 incurred liabilities of the eligible group through a combination of
27 cash and securities, surety bonds, irrevocable letters of credit,
28 insurance, or other financial instruments or guarantees sufficient
29 to meet the security requirements set by the director.

30 (b) The Self-Insured Groups' Security Fund shall submit a
31 plan for the director's approval no later than April 1, 2007. Until
32 the director approves either a financial plan or an alternative
33 security plan as described in paragraphs (1) and (2) of
34 subdivision (a), all self-insured groups shall remain members of
35 the Self-Insurers' Security Fund.

36 (c) Whenever the director, pursuant to Section 3701.5, shall so
37 order, the Self-Insured Groups' Security Fund shall assume the
38 liabilities of a private group self-insurer and make payments from
39 the Self-Insured Groups' Security Fund. The Self-Insured

1 Groups' Security Fund shall secure reimbursement therefor from
2 any and all member employers of the private self-insured group.
3 (d) Assessments into the Self-Insured Groups' Security Fund
4 shall be made by each private self-insured group. These
5 assessments shall be calculated in accordance with a formula
6 determined by the board of trustees of the Self-Insured Groups'
7 Security Fund as a percentage of the contributions received by
8 the group from its members for the prior year, but not to exceed
9 2 percent of the aggregate contributions. Funds obtained by these
10 assessments may be used only for the purposes of this section.
11 (e) Self-Insured Groups' Security Fund assessments provided
12 for in subdivision (d) may be assessed annually upon each
13 private self-insured group, as determined to be necessary by the
14 board of trustees of the Self-Insured Groups' Security Fund.